MONTANA LEGISLATIVE HISTORY

Chapter 225 19 77

Bill H 116 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 19	✓ C	Hearing Date(s)	Mar 10	✓ C
No minutes were	_____	___ C		Mar 16	✓ C
found re date of	_____	___ C		_____	___ C
action	_____	___ C		_____	___ C
Date Out	~~Jan 19~~	___ C		Mar 16	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HB BILL NO. 116

INTRODUCED BY Bradley Nutey
Haigwille Ellis

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 93-601-2 AND 93-701-4, R.C.M. 1947, TO EXTEND REPORTER'S PRIVILEGE TO INFORMATION OBTAINED FOR COMMUNICATION TO THE PUBLIC."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 93-601-2, R.C.M. 1947, is amended to read as follows:

"93-601-2. Disclosure of information and source of information -- when not required. (1) No-persons ~~without his consent no person~~ engaged, ~~or who was so engaged at the time the information sought was procured,~~ in the work of, or connected with or employed by any newspaper, ~~or any press association or any~~ news service, radio ~~broadcasting~~ station, ~~or any~~ television station, or community antenna television service for the purpose of gathering, ~~procuring, compiling,~~ writing, editing, or disseminating, ~~publishing, broadcasting or televising~~ news ~~shall~~ may be examined as to, or may be required to disclose, any information obtained or prepared or the source of ~~any~~ that information ~~procured or obtained by such person in the course of his employment~~, in any legal proceeding, if the information was gathered, received, or processed in the course of his employment ~~trial or investigation before any court, grand jury or petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent or agents, or before any commission, department, division or bureau of the state, or before any county or municipal body, officer or committee thereof.~~

(2) A person engaged as in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his employment.

(3) Dissemination in whole or in part does not constitute a waiver of provisions of subsection (1) or (2), or both."

Section 2. Section 93-701-4, R.C.M. 1947, is amended to read as follows:

"93-701-4. Persons in certain relations cannot be examined. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife without her consent; nor a wife for or against her

husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

6. Any person engaged in teaching psychology in any school, or who acting as such is engaged in the study and

observation of child mentality, shall not without the consent of the parent or guardian of such child being so taught or observed testify in any civil action as to any information so obtained.

7. A counselor, psychologist, nurse, or teacher, employed by any educational institution, cannot be examined as to communications made to him in confidence by a duly registered student of such institution; provided, however, that this provision shall not apply where consent has been given by the student, if not a minor, or if he is a minor, by the student and his parent or legal guardian.

~~8. A publisher, editor, reporter or other person connected with or employed upon a newspaper, or by a press association or wire service, or any person who has been so connected or employed, cannot without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be adjudged in contempt by a court, the legislature or any administrative body for refusing to disclose the source of any information procured while so connected or employed for publication and published in a newspaper.~~

~~Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, without his consent be examined as to any~~

~~communication--made--to-him-in-confidence-for-the-purpose-of proper-publication-nor-shall-he-be-so-adjudged--in--contempt for--refusing--to--disclose--the--soures--of-any-information procured-while-so-connected-or-employed--for--news--or--news commentary-purposes-on-radio-or-television.~~

98. A speech pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him."

-End-

JUDICIARY COMMITTEE

January 17, 1977

The regularly scheduled meeting of the House Judiciary was called to order by Chairman Scully at 8:00 A. M., Monday, January 17th, in Room 436 of the Capitol Building, Helena, Montana.

All members present with the exception of Representatives Dussault, Roth, and Teague, excused.

Scheduled for hearing were House Bills #116, 117, and 121.

Chairman Scully announced that House Bill #121 was cancelled and would be heard at a later date.

THE HEARING OPENED ON HOUSE BILL #116; introducing testimony was: REPRESENTATIVE BRADLEY, Chief Sponsor, District #77. She said there were several proposed amendments that she felt might be necessary. This bill is to extend reporter's privilege to information obtained for communication to the public.

She mentioned several examples of cases where the reporter was cited for contempt for failing to disclose the source of the information. She continued and explained the reporters shield law, who gets the privilege, what kinds are protected and how the privilege will be established. If reporters are required to disclose their source, they will dry up and the public will lose their right to know. In section 1, it broadens it somewhat. This bill is not really for news media, it is for the benefit of the public and the publics right to know. There is a growing tendency to subpoena journalists. She told of a case with the Great Falls Tribune and an attorney who had written a letter to the paper, in which parts of the letter were published and the supreme court said the rest of the information must be disclosed. The reporter was subsequently subpoened. The court ruled that he gave up his privilege by divulging some of the information. The privilege is not waived if part of that information is printed. We will have problems in this state if investigative reporters lose their privilege because the public will lose their right to know.

PROPONENT PHIL STROPE: I was the attorney that defended the newsman. It brought into focus the rights that we think we have. Our 43 and 73 statutes were held to be insufficient. He quoted Will Rogers, "we only know what we read in the newspapers." The public has a right to know and you have to protect him, the reporter, on the remainder of the material or his source of information will dry up, and the public will not know.

PROPONENT RON SEMPLE, Montana Press Association: I feel the bill makes the intent more clear. This bill is not desighed to protect

the public, right to know, but to protect the reporter. A reporter has to protect his source or he will not have any source. We ask that you strengthen and clarify the law. Let us take a step forward and make a good law better. (attached statement)

PROPONENT SAM GILLULY, Montana Press Association. Bill Janes planned to be here, but could not make it. He strongly supports our position. He presented the committee with a copy of prepared testimony. (attached)

REPRESENTATIVE BRADLEY, in closing commented that sometimes the privilege will be abused, but we cannot start accusing and cause an invasion of their duties and rights. But, that situation can work both ways, which side do you trust the most.

There was general discussion whether this also applied to cable TV and community antenna service.

REPRESENTATIVE DAY asked if this bill would exempt a reporter from a civil action in anything that would be printed in the paper.

It was decided that it does, but that they were trying to get to the truth and if the story is not true the source is not privileged. There was disucssion about sources and protecting sources.

REPRESENTATIVE RAMIREZ, commented that in a civil action there are other things involved, and REPRESENTATIVE MELOY, one of the sponsors of the bill, said the defense in those cases is truth. It seems to me that if he had something he could rely upon he would not abuse it.

CHAIRMAN SCULLY, said we don't have any sanction for someone who abuses it. The reason libel doesn't work is because you can't prove damages. He then asked of Meloy, would you be willing to go along with a criminal provision rather than a civil?

REPRESENTATIVE MELOY: The law must protect the source. This bill only relates to information the reporter has.

MR. SEMPLE: I don't know of any reporter that has made a career of misinformation. They do not last in the industry.

CHAIRMAN SCULLY: The case law has eroded that.

REPRESENTATIVE MELOY: Statute is the law now.

The comment was made that this bill is a significant step in the right direction.

REPRESENTATIVE CONROY, asked if reporters have a code of ethics. Mr Semple: It is sort of an unwritten law, no actual code, as such. I would not want to define what objectivity is. We are very careful of this kind of thing.

REPRESENTATIVE CONROY, told of a case in Billings concerning his wife

and a newspaper story about leases on the Crow Indian Reservation, which was untrue. At no time did the reporter talk to his wife or appeal to them for any information.

There was discussion about similar instances on the part of other members of the committee.

REPRESENTATIVE BRADLEY, wondered if the reporter only has the privilege as long as he doesn't disclose his information.

MR. GILLULY: Journalism is a rough draft of history.

REPRESENTATIVE BRADLEY, mentioned a case in 1972, an incident on illegal gambling in Silver Bow County, where the sheriff thought the reporter should aid in the enforcement of the laws of the state.

REPRESENTATIVE DUSSAULT: If I understand correctly, the intent of this amendment is to protect, if part has been disclosed.

REPRESENTATIVE RAMIREZ: Are we making a constitutional decision or a policy decision?

REPRESENTATIVE BRADLEY: It is a privilege and not an absolute right.

REPRESENTATIVE MELOY: The existing statute protects the source.

REPRESENTATIVE RAMIREZ: Are you expanding this somewhat beyond the source? If you take something out of context, aren't you sacrificing some degree of reliability?

REPRESENTATIVE DAY: It seems to me they put some facts in and some facts out.

REPRESENTATIVE ROTH: It seems to me, newspapers must police themselves.

MR SEMPLE: None of us has any kind of stake in misinforming the public. We all make mistakes in the pursuit of truth.

Hearing closed on House Bill #116.

HEARING OPENED ON HOUSE BILL #117.

REPRESENTATIVE BRAND, Chief Sponsor, District #28. Explained that this bill gives the veto power to the legislature. It will create a legislative interim policy committee to control the exercise of quasi-legislative powers by the executive branch of state government when the legislature is not in session. It is an amendment to the constitution.

PROPONENT CHAD SMITH, representing Montana Hospital Association. This is a very important piece of legislation. It gives to the people of Montana the right to control between sessions of the legislature. The enactment of legislation has gotten out of control. I think this is a very necessary piece of legislation. It sets up a legislative

The Independent Record

P. O. BOX 4249 • HELENA, MONTANA 59601 • (406) 442-7190

My name is Ronald Semple. I am publisher of the Helena Independent Record and I am chairman of the Freedom of Information Committee of the Montana Press Association.

I am grateful for this opportunity to testify in favor of the proposed changes to Montana's Shield Law (House Bill # 116).

The proposed changes in the Shield Law strengthen it and make its intent clearer.

The new, stronger law will make it easier for reporters and editors to do their job of informing the people.

This law is not designed to protect reporters and editors but rather it is designed to protect the people's right-to-know by permitting reporters and editors to gather information in the only way that may be open to them.

It is worth remembering that the source of the information that ultimately led to the resignation of a president of the United States came from a person who would not reveal his identity to even the reporters involved.

A reporter who cannot protect his sources will soon have no sources.

The Montana legislature, in its wisdom, passed a Shield Law which prohibits anyone from interfering with essential news-gathering processes. We ask now that the legislature again exercise that wisdom and strengthen and clarify that Shield Law.

We recognize that those who would oppose a Shield Law--as well as the strengthening of it--have a strong argument when they contend that no one should be free from the obligation of giving testimony in the pursuit of justice.

But we in the press agrue that the public's right-to-know is collectively more important to society than any individual reporter's obligation to testify in court or anywhere else.

Reporters in recent years have given elequent confirmation to that contention by choosing to go to jail rather than reveal either the sources of their information or additional information which never saw print. I have no doubt that priests, attorneys, physicians and others who have a special relationship with those with whom they deal would also risk jail before they would betray confidences.

But Montana law does protect reporters, priests, attorneys, physicians and others. We should be proud of that, especially when a considerable number of our sister states are not so clearsighted.

Let us take a small step further and make a good law better.

Thank you.

Bill James

Montana Press Association and Montana Advertising Services, Inc.

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January 17, 1977

Mr. Chairman:

My name is Sam Gilluly and I am Secretary-Manager of the Montana Press Association. The Association is composed of 65 weekly and semi-weekly and 11 daily newspapers in Montana.

The Association wishes to endorse HB 116. It does so because the bill authorizes an improved shield and protection for newsmen, thus providing more open government. As has been pointed out, the newsman's privilege is not for his benefit, but is given to him solely for the benefit of the public's right to know. The newsman is simply a surrogate, acting for the public.

If sources and information are not protected, in the end it will be the public that is the loser. Any news reporter, in any of the media, would tell you that he secures a considerable portion of his news from "tips" from confidential sources. And the reason that these sources are open to him is because the informants feel secure in the knowledge the reporter will keep a confidence.

The alternative, of course, is that a reporter could go to jail if he refuses to expose his source of information. In certain cases, or in some states where there is no protection such as the Montana "shield" law, the reporter does go to jail. This happens many times every year.

No doubt others here will tell you that the principle of the shield law has strong grounding in both the United States and the Montana Constitutions.

The law as amended will clarify some problems that reporters have had in Montana because it will eliminate the threat of jail for them specifically by the new language in lines 7 to 16 on Page 2 of the introduced bill.

The Montana Press Association respectfully urges your support of HB 116.

Senate Judiciary - Mar 10

CONSIDERATION OF HOUSE BILL 116:

Rep. Dorothy Bradley of District 67, Bozeman, sponsor of this bill, said that it involved some cleanup on the present law and some substantive changes. She said that it did two things, the first being that, in addition to not having to disclose the source of information, the reporter would not have to disclose the information itself, and that if some of the information had been disclosed by a reporter he does not have to disclose the rest of it. This bill was introduced because of a decision made by the Montana Supreme Court last year and the whole point is whether or not partial dissemination should constitute a waiver. News reporters are not a police force for the state. They are supposed to tell the public what is going on, but, if those who know of corruption are not guaranteed anonymity, they will not tell the public. This bill deals with the confidentiality of sources of information. The rule of freedom of the press is very crucial in this country. She further told the committee that this bill is not something the reporters dreamed up, but it is something for the people.

The other witnesses who were proponents and present to testify were: Mr. Sam Gilluly, secretary-manager of the Montana Press Assn., told the committee that they supported the bill, and Terry Dwyer of the Great Falls Tribune said that he thought the question is whether this bill is in the public interest rather than in the interest of the press. He also agreed that people involved would not want to talk to reporters if they feared they would say who gave them the information.

At this point, Ron Semple of the Independent Record said that the people's right to know is protected by allowing reporters to make and disseminate information for the public. He asked that the legislature strengthen the "Shield Law" because a reporter would go to jail rather than reveal confidences.

Bob McGifford of the faculty of the School of Journalism at the University of Montana said that the shield law has worked very well. He added that the Great Falls Tribune case of 1976 shows that Montana is not immune to pressures.

Bob Henney, executive director of the Montana Broadcasters Assn., told the committee that this legislation is supported by ther because it provides protection for broadcasters as well as reporter: Senator Pat Goodover, who is a former broadcaster, said that he supports this bill also.

Phil Strope, a Helena attorney appearing for himself, said that he had represented Frank Adams in the Great Falls Tribune case in 1976 and he said that he believes the Supreme Court made an error in their decision. By that decision, it means that the newsman does not have the same privilege of confidentiality as doctors do with their patients.

The next proponent was Greg Morgan of the Montana Bar Assn. who said that they adopt the comments of the other proponents.

There were no more proponents of the bill present.

Rick Foot, a Butte newspaperman, representing himself, was the only opponent of the bill to testify. He said that he believes shield laws are not healthy to the press, and that, dealing on a daily basis with the bureaucracy which has existed in Montana for the past several years, he finds that employees remain afraid of their bosses and are afraid to talk to reporters.

At this time Rep. Bradley was allowed to close. She said that she found the comments of Rick Foot interesting and that a reporter does not have an absolute 1st Amendment right, but he has a privilege.

The Chairman then allowed questions by committee members. During this time, Frank Adams, the Tribune reporter involved in the Supreme Court case, told the committee that does not think a reporter should take a position on legislation. He said that when the Supreme Court called him he did not know what they were going to ask him and he drew the line about what he was going to talk about.

Senator Turnage, the committee Chairman, told the witnesses that the committee would take H.B. 116 under advisement.

CONSIDERATION OF HOUSE BILL 384:

This bill had been transferred in to committee on the previous day. After some discussion as to the bill being overbroad, Senator Towe moved to amend page 3, section 1, line 2, following "to" by inserting "persons acting as". The motion carried unanimously. He then moved that H.B. 384 as amended BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 4:

During discussion by the committee members, it was decided that Billings should have a 4th judge and Gallatin should have another one; also, that Lincoln County can justify its own judicial district. Senator Warden moved that the bill be so amended. The motion carried unanimously.

Senator Regan moved that H.B. 4 as amended BE CONCURRED IN. The motion carried unanimously. However, Senator Towe said that he had never had any trouble in Judge Lessley's court getting cases set.

There being no further business, the committee adjourned at 11:20 a.m..

Jean A. Turnage

SENATOR JEAN A. TURNAGE, Chairman

Senate Judiciary Mar 16

Sen. Regan and Sen. Lensink voting "No".

Sen. Towe then moved that HB 80 as amended BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 116:

Sen. Towe moved to amend page 2, section 1, line 14, following "Dissemination" by inserting ", except as provided in subsection (4),"; and to further amend page 2, section 1, following line 16, by inserting "(4) if the person claiming the privilege voluntarily offers to testify, with or without having been subpoenaed, before a judicial, legislative, administrative, or other body having the power to issue subpoenaes, he waives the provisions of subsections (1) and (2)." The motion carried unanimously.

Sen. Towe then moved that HB 116 as amended BE CONCURRED IN. The motion carried unanimously.

Sen. Turnage, Chairman, assigned the following bills to be carried on 2nd Reading by:

Murray - HB 80 and 343	Regan - HB 607	Warden - HB 116
Towe - HB 273	Roberts - HB 291	

There being no further business at this time, the committee adjourned at 11:05 a.m.

Jean A. Turnage

SEN. JEAN A. TURNAGE, Chairman

HOUSE BILL NO. 116

INTRODUCED BY BRADLEY, MELOY, STAIGMILLER, ELLIS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 93-601-2 AND 93-701-4, R.C.M. 1947, TO EXTEND REPORTER'S PRIVILEGE TO INFORMATION OBTAINED FOR COMMUNICATION TO THE PUBLIC."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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(2) A person engaged as in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his employment.

(3) Dissemination, EXCEPT AS PROVIDED IN SUBSECTION (4), in whole or in part does not constitute a waiver of provisions of subsection (1) or (2), or both.

(4) IF THE PERSON CLAIMING THE PRIVILEGE VOLUNTARILY OFFERS TO TESTIFY, WITH OR WITHOUT HAVING BEEN SUBPOENAED, BEFORE A JUDICIAL, LEGISLATIVE, ADMINISTRATIVE, OR OTHER BODY HAVING THE POWER TO ISSUE SUBPOENAES, HE WAIVES THE PROVISIONS OF SUBSECTIONS (1) AND (2)."

Section 2. Section 93-701-4, R.C.M. 1947, is amended to read as follows:

"93-701-4. Persons in certain relations cannot be examined. There are particular relations in which it is the

REFERENCE BILL

policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

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5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

6. Any person engaged in teaching psychology in any school, or who acting as such is engaged in the study and observation of child mentality, shall not without the consent of the parent or guardian of such child being so taught or observed testify in any civil action as to any information so obtained.

7. A counselor, psychologist, nurse, or teacher, employed by any educational institution, cannot be examined as to communications made to him in confidence by a duly registered student of such institution; provided, however, that this provision shall not apply where consent has been given by the student, if not a minor, or if he is a minor, by the student and his parent or legal guardian.

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~~publication and published in a newspaper.~~

~~Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television.~~

98. A speech pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him."

-End-